

SERVICE DATE - OCTOBER 20, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-573X<sup>1</sup>

TRINIDAD RAILWAY, INC.--ABANDONMENT EXEMPTION--  
IN LAS ANIMAS COUNTY, CO

Decided: October 19, 2000

Trinidad Railway, Inc. (Trinidad) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances of Trackage Rights for Trinidad to abandon and The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UP) to discontinue trackage rights over an approximately 30.0-mile line of railroad from milepost 2.0 at Jensen (west of Trinidad), to the end of the line at the former New Elk Mine at milepost 30.0 (east of Stonewall), in Las Animas County, CO. Notice of the exemption was served and published in the Federal Register on September 21, 2000 (65 FR 57239-40).

By petition filed September 18, 2000, and amended September 26, 2000, the Rails to Trails Conservancy (RTC) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d), in order to negotiate with Trinidad for acquisition of the right-of-way for use as a trail. RTC submitted a statement indicating its willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of (if the user is immune from liability, it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By reply filed October 10, 2000, Trinidad indicated its willingness to negotiate with RTC for interim trail use.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on September 26, 2000. In the EA, SEA indicated that the U.S. Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency (EPA), the U.S. Department of Agriculture, Fish and Wildlife Service (USFW), the Colorado Department of Archaeology and Preservation (SHPO), the Colorado Department of Transportation (CO-DOT), and the Colorado Department of Environmental Quality (CO-DEQ) have not completed their

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<sup>1</sup> Decisions issued in this proceeding on September 1, 2000, and September 21, 2000, also embraced STB Docket No. AB-6 (Sub-No. 388X), The Burlington Northern and Santa Fe Railway Company--Discontinuance of Trackage Rights Exemption--in Las Animas County, CO, and STB Docket No. AB-33 (Sub-No. 160X), Union Pacific Railroad Company--Discontinuance of Trackage Rights Exemption--in Las Animas County, CO.

evaluation of the potential impact of this project on water resources, environmental, endangered species, historical resources, highway/rail at-grade crossings, and air quality. Therefore, SEA recommended that conditions be imposed on any abandonment authorization requiring Trinidad to: (a) consult with the Corps prior to salvage of the right-of-way to determine if the proposed abandonment is consistent with applicable Federal, state and local water quality standards and to determine if permits are required under section 404 of the Clean Water Act; (b) consult with the EPA regarding the discharge of stormwater resulting from the disturbance of more than 5 acres, and consult with the EPA and secure all necessary permits prior to initiation of salvage or disposal activities; (c) consult with the USFW prior to initiation of salvage or disposal activities; (d) consult with the SHPO prior to salvage of the rail line to determine if the proposed abandonment is consistent with section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (e) consult with the CO-DOT prior to abandonment to determine the impact of salvage activities on existing highway/rail at-grade crossings; and (f) consult with the CO-DEQ prior to abandonment to secure all necessary permits prior to initiation of salvage or disposal activities.

SEA also states that the U.S. Department of Commerce, National Geodetic Survey (NGS) has identified ten geodetic station markers that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that may disturb or destroy these markers. Therefore, SEA recommends that a condition be imposed requiring Trinidad to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

Additionally, SEA has advised that the Professional Land Surveyors of Colorado, Inc., by letter received October 4, 2000, has expressed concern about the protection of the railway engineering and surveying records. Therefore, SEA recommends that Trinidad be required to: (a) file all right-of-way and tract maps, land schedules, and related railroad cadastral records with the Las Animas County Surveyor and/or Clerk and Recorder; and (b) file all records regarding structures, drainage, underground utility records, contracts, etc., with the Las Animas County Engineer or other similar repository for preservation of historical engineering data.

The exemption was scheduled to become effective on October 21, 2000, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Rail Ventures, Inc. (Rail Ventures), to purchase the entire line, which has the effect of staying the effective date of the exemption for 10 days until October 31, 2000.<sup>2</sup> Rail Ventures simultaneously requested that Trinidad provide it with the financial data and information prescribed in 49 CFR 1152.27(a). Under 49 CFR 1152.27(c)(2)(ii)(B), OFAs are due 30 days after publication of the notice of exemption in the Federal Register. On October 17, 2000, Rail Ventures filed a request to toll the 30-day period for submitting its OFA in accordance with 49 CFR 1152.27(c)(2)(ii)(D). Rail Ventures states that, in an oral conversation on October 13,

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<sup>2</sup> See 49 CFR 1152.27(c)(2)(i).

2000, and October 16, 2000, counsel for Trinidad advised Rail Ventures that the requested information was not available and would not be for an undetermined period of time. Rail Ventures states that Trinidad does not oppose the tolling request.

RTC's request for interim trail use has been satisfied and, therefore, imposition of a NITU is appropriate, commencing with the effective date of the exemption. However, an OFA takes priority over a request for a NITU. Therefore, the issuance and effectiveness of the NITU will be delayed until the OFA process has been completed. If agreement is reached on the sale or subsidy of the line, trail use conditions would not be necessary or available. If no OFA is filed or if no agreement is reached on the OFA, the appropriate decision and notice of interim trail use or abandonment will be issued.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the conditions that Trinidad: (a) consult with the Corps prior to salvage of the right-of-way to determine if the proposed abandonment is consistent with applicable Federal, state and local water quality standards and to determine if permits are required under section 404 of the Clean Water Act; (b) consult with the EPA regarding the discharge of stormwater resulting from the disturbance of more than 5 acres, and consult with the EPA and secure all necessary permits prior to initiation of salvage or disposal activities; (c) consult with the USFW prior to initiation of salvage or disposal activities; (d) consult with the SHPO prior to salvage of the rail line to determine if the proposed abandonment is consistent with section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (e) consult with the CO-DOT prior to abandonment to determine the impact of salvage activities on existing highway/rail at-grade crossings; (f) consult with the CO-DEQ prior to abandonment to secure all necessary permits prior to initiation of salvage or disposal activities; (g) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers; and (h) file all right-of-way and tract maps, land schedules, and related railroad cadastral records with the Las Animas County Surveyor and/or Clerk and Recorder and file all records regarding structures, drainage, underground utility records, contracts, etc., with the Las Animas County Engineer or other similar repository for preservation of historical engineering data.<sup>3</sup>

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<sup>3</sup> The environmental conditions imposed apply only to the abandoning carrier (Trinidad) and not to the carriers that are discontinuing service (BNSF and UP).

3. The request for issuance of a notice of interim trail use is held in abeyance pending completion of the OFA process.
4. Trinidad is directed to provide Rail Ventures with the requested information to enable Rail Ventures to file an OFA. The deadline for Rail Ventures to file its OFA is extended to November 20, 2000.
5. If the OFA process terminates, a decision effective on its service date will be issued to provide a period for interim trail use negotiations.
6. The effective date of the exemption is postponed until November 30, 2000.
7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary